

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3484 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NARMADABEN V PARMAR

Versus

TALUKA DEVELOPMENT OFFICER

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Appearance:

MR TUSHAR MEHTA for Petitioner

MR PK JANI for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/10/97

ORAL JUDGEMENT

This petition under Article 226 of the Constitution raises an interesting and neat question of law whether the Chairman of the Social Justice Committee of the Taluka Panchayat (hereinafter referred to as the Committee) elected by the members of the Said Committee from amongst themselves can be removed by its members by passing a motion of "no confidence".

2. The petitioner is an elected member of Kheralu Taluka Panchayat-respondent no.2 herein. In his capacity as a member of taluka Panchayat the petitioner was elected as a member of the Social Justice Committee of the Taluka Panchayat. The Committee has five members and from amongst the members of the Committee the petitioner was elected as the Chairman of the said Committee on January 18, 1996. Thereafter on April 19, 1997, the remaining four members of the Committee moved a motion of no confidence and therefore, the Taluka Development Officer, who is the Secretary of the Panchayat, informed the petitioner that the motion of no confidence was received on April 19, 1997 and it was also forwarded to the petitioner on the same day. Hence, if the petitioner did not convene a meeting of the Social Justice Committee within 15 days, the meeting will be convened by the Taluka Development Officer or the District Development Officer. In view of the said communication dated April 28, 1997 the petitioner filed the present petition on April 30, 1997.

3. The petition is filed for quashing and setting aside the said communication and for a declaration that the said notice was without jurisdiction and beyond the scope of provisions of the Gujarat Panchayats Act, 1993 (hereinafter referred to as the Act) and also for a declaration that the motion of no confidence against the petitioner was without jurisdiction and beyond the scope of provisions of the Act.

4. Before narrating the submissions of the learned Counsel for the parties it will be useful to refer to the statutory provisions regarding the Social Justice Committee of the Taluka Panchayat. It is constituted under the provisions of Section 123 of the Act for performing such functions as are considered essential for securing social justice to the weaker sections of the society including persons belonging to the Scheduled Castes and the Scheduled Tribes as may be prescribed. Sub-section (3) of Section 129 provides that the Committee shall not consist of more than five members. Sub-section (9)(b) provides that the term of the Social Justice Committee shall be coextensive with the duration of the panchayat. The constitution of the Social Justice Committee shall be such as may be provided subject to the provisions of sub-section (3). Sub-section (5) provides that the members of the committee shall be elected by the panchayat from amongst its members. Sub-section (6) and sub-section (9) are strongly pressed into service by the learned Counsel for the petitioner and the same are quoted here under:

(6). Where any committee is constituted under this section, the members of the Committee shall elect from amongst themselves the Chairman of the Committee:

Provided that -

(a). Where the President and Vice President both are members of any such committee, the President shall be the ex officio chairman of such committee and if he declines to hold the office, the Vice President shall be the ex officio Chairman of the Committee, unless he also declines to hold the office,

(b). where only one of them is a member thereof he shall be the ex officio Chairman of the Committee, unless he declines to hold the office and

(c) a person who is not a member of the panchayat shall not be eligible to be the Chairman of any Committee.

Sub-section (9) provides as under:

(9)(a) The term of each of the committees other than the Executive Committee and the Social Justice Committees shall be for such period not exceeding one year as may be determined by the panchayat.

(b). The term of the Executive Committee shall be two years and on expiry of its term, the committee shall be reconstituted and the term of the Social Justice Committee shall be coextensive with the duration of the panchayat:

....."

(emphasis supplied )

5. Mr.Tushar Mehta learned Counsel for the petitioners has made the following contentions:

(I). There is no provision in the aforesaid section 123 or any other provision of the Act providing for the removal of the Chairman of the Social Justice Committee. The term of the committee is coextensive with the duration of the panchayat and therefore, once the petitioner is elected as the Chairman of the said Committee, she could not have been removed till the term of the Panchayat expires on July 13, 2000.

(II). whenever the legislature intended to confer any such power of removal by passing a motion of no confidence, the legislature has made a specific provision. For instance section 70 of the Act makes provision for passing a motion of no confidence against the President or the Vice President of the Taluka Panchayat. Section 71 of the Act confers power on the competent authority to remove from office any member of a panchayat or any President or Vice President thereof after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after holding inquiry, if such member, President or Vice President has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuse of his power etc.

Similarly the Act has made provision in Section 56 of the the Act for passing of no confidence motion against the sarpanch or upsrpanch of the Gram Panchayat. So also in respect of the District Panchayat, Section 84 contains the provision for removal of the President or vice president by passing a motion of no confidence.

(III). Reliance is placed on the judgment of a Division Bench of the Bombay High Court in the case of Hindurao Balwant Patil and anr. Vs. Krishnarao Parshuram Patil and others, AIR 1982 Bombay 216 wherein, according to the learned Counsel for the petitioner, it is held that the right to contest election and the right to move for setting aside an election or right to recall the person already elected are not common law rights. These rights must be conferred by the statute. The members of the Committee cannot be permitted to do indirectly what they are not permitted to do directly under any of the provisions of the Act or rules. Power to recall is not inherent in the

electorate. Therefore, in the absence of such a power it was not open to the members of the Committee to remove the Chairman of the Committee by passing a mere vote of no confidence. Such powers cannot be exercised by taking recourse to or applying the doctrine of implied and inherent power or right to recall. Similar view is taken in N. Venkata Narayan Vs. District Deputy Collector, ILR (1975) AP 242.

6. On the other hand Mr.P.K.Jani, learned Counsel for the Taluka Development Officer , Kheralu, has made the following submissions:

- (i). As per the basic tenet of democracy the body which elects its Chairman or Vice Chairman also has the inherent power to remove them by merely passing a vote of no confidence. Since each body has such inherent and implied power and right, it need not be conferred by any special statutory provision.
- (ii). The provisions of sections 56, 70 and 84 of the Act providing for removal of sarpanch/upsarpanch of the Gram Panchayat, President/Vice President of the Taluka Panchayat or the District Panchayat are special statutory provisions laying down a special mode of removal because there 2/3rd majority is prescribed for passing motion of no confidence and therefore, such special statutory provisions are required if the legislature intends to prescribe a special norm or mode of removal.
- (iii). Reliance is placed on the observations made by this Court in the case of Chimanbhai R.Patel Vs. Anand Municipality & Ors. 24(1) GLR 67 wherein the view taken is that even if the statute does not confer specific power, the general rule will apply and the municipality can remove the Chairman of a Committee if he abuses his power as the Chairman and that the Office of the Chairman of a Committee is distinct and separate from the office of a Municipal Councillor.

7. I have heard the learned Counsel for the parties at length. It is true that the provisions of the Act do not specifically provide for removal of the Chairman of the Committee by passing a vote of no confidence. However, it is required to be noted that the provisions of Section 123(9)(b) provide for the term of the

committee making it coextensive with the duration of the panchayat which is five years . However, no term is provided for the office of the Chairman of the Committee. There is, therefore, nothing in the provisions of Section 123 of the Act which gives any fixed term to the Chairman of the Committee although the members of the Committee get term coextensive with the duration of the panchayat. If the legislature intended to confer any such fixed term on the chairman of the Committee the legislature would have clearly provided so.

8. It is also true that there are specific provisions for removal of the Sarpanch/upsarpanch of the gram panchayat, President/Vice President of taluka panchayat under sections 56,70 and 84 respectively but there is no such provision for Chairman of any Committee. But Mr.Jani has rightly pointed out that in all those provisions special provision is made requiring passing of no confidence motion by 2/3rd majority and not by a simple majority. It is a basic tenet of democracy that an elected body has the power to elect its office bearers and if the body is not held to have power to appoint or remove its office bearers, the body will never be able to enforce accountability or responsibility of its office bearers or control the action of its office bearers. For instance, if one looks to the constitution of the Social Justice Committee, it comprises of five members and if, as in the instant case, out of five members four members have no confidence in the chairman and if this situation is allowed to continue till expiry of the term of the Committee (which event will take place in July 2000, in the instant case), there will be constant dead-lock and the committee will not be able to function effectively and carry out the duties assigned to it. It must, therefore, be held that the body which has power to elect its office bearers by a simple majority has also the inherent or implied power to remove them by passing the motion of no confidence by a simple majority, unless there are special provisions prescribing a special procedure or special requirement, such as the requirement for 2/3rd majority to remove the President/Vice President of the Taluka Panchayat/Disitrcit Panchayat.

10. Even the provisions of Section 16 of the General Clauses Act can be relied upon for the purpose of buttressing the aforesaid conclusion that the power to appoint includes the power to remove. The submission of Mr.Mehta that the provisions of Sec.16 of the General Clauses Act cannot be invoked in the instant case because herein the petitioner was not appointed but elected, has no substance. Appointment on a post or office can be

made by various modes. Election is only one of the modes of appointment. Therefore, the provisions of section 16 can certainly be applied. There is one important point which is required to be noted here. That is in respect of the power conferred upon the people to elect their representatives to the legislature or the general body of the Panchayat, municipality, etc. which is not to be confused with the power to appoint. The right to elect one's representative to a seat in the Legislature does not include the right to recall because the Constitution or the relevant statute provides for specific term for which the legislators/ members/councillors are elected. As Edmund Burke has said, people's representatives in the legislature are not their mere agents, but they are their delegates. The election to the seats in legislative bodies therefore, stands on a different footing from the appointment of the office bearers who are only agents of the particular body which elects them. Hence the power to appoint, whether by election or otherwise, also includes the power to remove the appointees unless there are specific provisions to the contrary or unless the appointment for a specific term. A Division Bench of this Court in the case of Chimanbhai R. Patel (*supra*) has also held that even though the provisions of Gujarat Municipalities Act do not contain any specific provision for the removal of the Chairman of the Committee, the general rule that the appointing authority namely the Municipality can remove the Chairman of the Committee, if he abuses his power as the Chairman thereof, must apply. It is also held that the office of the Chairman of a Committee is distinct and separate from the office of a Municipal Councillor. In the instant case also the post of Chairman of the Social Justice Committee is separate and distinct from the membership of the Committee and the membership of the panchayat and therefore, the vote of no confidence will obviously be concerned with the petitioner's holding the post of Chairman and not with the membership of the Committee or of the taluka panchayat.

11. As far as reliance placed by Mr. Mehta on the decision of the Bombay High Court in the case of Hindurao (*supra*) is concerned, it is true that *prima facie* the observations made in paragraphs 9, 10 and 18 of the said judgment support the case of the petitioner. However, it is required to be noted that the Division Bench of the Bombay High Court has noted that the decision was being rendered in respect of co-operative societies. It is also observed therein that the co-operative movement is a separate movement which need not be connected with party politics. It is also required to be noted here that the

provision for Disqualification of Members of Local Authorities Act does not apply to the Co-operative societies but it is applicable to the Local self-government bodies such as Panchayats and Municipalities. Hence the underlying premise of the decision of the Bombay High Court that party politics has no place in co-operative societies is not applicable to panchayat. Otherwise also I am not inclined to agree with the view taken by the Bombay High Court as I am bound by the decision of the Division Bench in the case of Chimanbhai Patel (*supra*) and I also share the view taken by the Punjab & Haryana High Court in the case of Haji Anwar Ahmed Khan Vs. The Punjab Wakf Board and others, AIR 1980 Punjab and Haryana 306, and by a learned single Judge of the Andhra Pradesh High Court in the case of N. Venkataratnam Naidu Vs. The District Collector, Nellore and others, AIR 1972 AP 349 and a Division Bench of the Delhi High Court in the case of Bar Council of Delhi Vs. The Bar Council of India AIR ,1975 Delhi 200 where the view taken is that the office bearers of the cooperative societies or panchayat are elected by and responsible to the body which elects them by simple majority and, therefore, the necessary conclusion would be that they can be removed at the pleasure of the body so electing and that if this view is not taken it will result in having irrevocable office bearers and the office bearers will not be responsible to the body electing them. In this connection it is required to be noted that even while holding that where there is no specific power given to the members of a committee or board of directors to remove its office bearers by passing a mere vote of no confidence, the Division Bench of the Bombay High Court has made the following observations in para 19 of the judgment:

" However, before parting with this case, we might observe that this is a case wherein the meeting for passing the vote of no confidence was already held and the resolution is also passed by the majority of the members of the Board. Thus, the petitioners very well knew that they no longer enjoy the confidence of the Board. In these circumstances the petitioners should well consider whether they should resign from the posts. Moreso in view of the well established conventions of public life as well as of the cooperative movement which is based on mutual trust."

(emphasis supplied )

It is thus clear that the Bombay High Court has also acknowledged that reading implied power of the members of the board of directors to remove the office bearers by passing a vote of no confidence would certainly be consistent with the well established convention of public life. When two interpretations of statutory provisions are possible, one which accords with a well established convention of public life and the other which militates against the well established convention of public life, the Court must instinctively go for the former.

12. In view of the aforesaid discussion, there is no substance in any of the contentions urged on behalf of the petitioner. The petition therefore, fails and is hereby dismissed. The ad-interim stay granted earlier stands vacated.

13. At this stage Mr.Mehta, learned Counsel for the petitioner prays that the ad-interim relief granted earlier may be continued for some time to enable the petitioner to take further recourse in accordance with law. In the facts and circumstances of the case, the ad-interim relief granted earlier shall continue till October 24, 1997.

( M.S.Shah J. )